



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/055,678	01/23/2002	Robert Manuel Carmichael	8960.6815	9297

7590 05/09/2003

Daniel S. Polley, Esq.
Malin, Haley & DiMaggio, P.A.
1936 South Andrews Avenue
Fort Lauderdale, FL 33316

EXAMINER

LAGMAN, FREDERICK LYNDON

ART UNIT	PAPER NUMBER
----------	--------------

3673

DATE MAILED: 05/09/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/055,678

Applicant(s)

CARMICHAEL, ROBERT MANUE

Examiner

Frederick L. Lagman

Art Unit

3673

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Objections

1. Claim 3 is objected to because of the following informalities: line 3, the recitation of "when the wearer" appears to be incomplete. Appropriate correction is required.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 7 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Noguchi #4,715,364. Noguchi discloses a waist adjustment component comprising: loop member 5 defining a passageway; a body member 2 having a first side and a second side, means 6a, 6b for retaining the body member in a folded position, wherein the first end of the body member is inserted through the passageway and folded over and maintained in its folded position by hook and loop fasteners 6a, 6b.
4. Claims 1-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Matsuoka #5,363,790. Matsuoka discloses a belt to worn with a garment such a buoyancy compensator, the belt adapted to be adjusted to maintain a tight attachment. Matsuoka discloses a waist adjustment component comprising: loop member 64 defining a passageway; a body member 24L having a first side and a second side, means 66 for retaining the body member in a folded position, wherein the first end of the

Art Unit: 3673

body member is inserted through the passageway and folded over and maintained in its folded position by hook and loop fasteners 66.

5. Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Piper #1,272,519. Piper discloses a belt adapted to worn with a garment such as trousers.

The belt including means 15 for removably securing the belt to the garment and means 17 for maintaining a tight fit.

Double Patenting

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

7. Claims 1-7 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-16 of U.S. Patent No. 6,132,142.

Although the conflicting claims are not identical, they are not patentably distinct from each other because U.S. Patent '142 discloses the belt comprising a waist adjustment portion including a loop member and the belt adapted to be used for diving with buoyancy compensators.

Art Unit: 3673

8. Claims 1-7 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-16 of U.S. Patent No. 5,746,542. Although the conflicting claims are not identical, they are not patentably distinct from each other because U.S. Patent '542 discloses the belt comprising a waist adjustment portion including a loop member and the belt adapted to be used for diving with buoyancy compensators.

9. Claims 1-7 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-12, 14, 15, and 18-20 of copending Application No. 09/687,889. Although the conflicting claims are not identical, they are not patentably distinct from each other because Application No. '889 . discloses the belt comprising a waist adjustment portion including a loop member and the belt adapted to be used for diving with buoyancy compensators.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Conclusion


10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frederick L. Lagman whose telephone number is 703-305-7456. The examiner can normally be reached on Monday-Friday 9:00am to 5:30pm.

Art Unit: 3673

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather Schackelford can be reached on 703-308-2978. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-7687 for regular communications and 703-305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1134.



Frederick L. Lagman
Examiner
Art Unit 3673

FLL
May 4, 2003